John Archibald Campbell, Associate Justice of the United States Supreme Court, 1853-1861. By Henry G. Connor, LL.D. Boston, Houghton, Mifflin Co. 1920. pp. iii, 310.

In 1857, the leading figures in the Supreme Court of the United States were Chief Justice Taney and the two junior Associate Justices, Benjamin R. Curtis of Massachusetts and John A. Campbell of Alabama. Both of the latter, after a few years, resigned their seats. Both left behind them a high reputation for learning and philosophic insight into legal principles. Both had evinced what may be called judicial statesmanship. Both returned to practice at the bar, and with distinguished success.

Judge Connor has painted Campbell's character with a friendly hand, but does not go beyond the limits of that enthusiasm which every author of such a work is in a manner called to bring to it. It was a strong and solid character. Campbell had few elements of popularity. George Ticknor Curtis is quoted as saying of him, in his commemorative address before the bar of the Supreme Court of the United States, that "he ranks with the greatest advocates of our time, not for eloquence, not for brilliancy, not for the arts of the rhetorician, but for those solid accomplishments, for that lucid and weighty argumentation, by which a Court is instructed and aided to a right conclusion. The day of mere eloquence has passed away from this forum. What is effectual here now is clearness of statement, closeness and accuracy of reasoning, and the power to make learning useful in the attainment of judicial truth. These accomplishments were possessed by Judge Campbell in a very uncommon degree. He has lived to a great age, and in the whole of his long life there has never been a public act or utterance that is to be regretted" (pp. 284, 5).

These last words are, however, hardly reconcilable with one act, which led to his arrest and imprisonment in Fort Pulaski, in 1865. He had served during the Civil War, as Assistant Secretary of War in the government of the Confederate States. Towards the close of the war, a letter from a private individual was sent to Jefferson Davis as President of the Confederacy, in which the writer proposed "to assassinate Mr. Lincoln and other union leaders and requested an interview for the purpose of unfolding his plan" (p. 197). It found its way to the Confederate War Department, and, falling into Judge Campbell's hands, he referred it to the Adjutant General of the Confederacy "for attention," and made an endorsement upon it to that effect. Judge Campbell afterwards stated as a justification that this endorsement was made "in the regular course of the routine of the office," it being the duty of the Adjutant General "to examine and dispose of letters between parties" (p. 198). Secretary Stanton, being of opinion that this was a serious offence, sent him to Fort Pulaski for it. Justice Campbell applied to President Johnson for release as an act of amnesty, and filed with the application papers in which he urged that the endorsement was "no cause whatever" to subject him to "death or bonds." Posterity can hardly agree to the validity of the defence.

Justice Campbell practiced law for twenty years in Alabama, removing to New Orleans upon the close of the Civil War. Searches of land titles in Alabama often required an examination of old Spanish grants. This led him to the study of Spanish law and of the Roman law, on which it was founded. His removal to New Orleans brought him into a bar where a knowledge of those systems of jurisprudence was still more necessary. He had a large library, comprising the works of the leading civilians in Latin, French, and Spanish, and made good use of it, both when he was at the bar and on the bench. He enjoyed hard work. He brooded over his cases: threw himself whole heartedly into his client's position; and spared no pains to serve him well.

In his later years, he stated that his ideal of professional life was "to have six cases a year before the Supreme Court of the United States and plenty

of time to investigate and prepare for argument." He was qualified to speak of this with authority, for he had attained the goal which he desired at the age of forty-two (pp. 11, 254).

One of the great constitutional questions which he argued at the bar arose in the *Slaughter-House Cases* (1872, U. S.) 16 Wall. 36. Chief Justice Waite and Justice Gray each remarked of Campbell's presentation of his views to the Court, that it was the greatest argument he had ever listened to (p. 249). These cases turned on the true meaning of the Fourteenth Amendment to the Constitution of the United States. Here, he contended, was an immense extension of the powers of the nation, and a gift of citizenship in it, which carried most imporant privileges. The Court took the view that there was a dual citizenship, and that the Amendment was adopted mainly to protect the negro. Judge Connor points out that of the more than six hundred cases in which its protection has been invoked, only twenty-eight involved racial rights of the colored man (p. 233), and quotes from a North Carolina lawyer, as a not inapt statement of its effect, that it was made "for the protection of the negro, but has become the asylum of the multi-millionaire" (p. 234).

Campbell's last case in the Supreme Court he argued when over seventy. This was that of *New Hampshire v. Louisiana* (1882) 108 U. S. 76, 2 Sup. Ct. 176, which decided that one state could not sue another, without its consent, in the Supreme Court of the United States, on a private contract. His biographer rates it, and so did Campbell himself (pp. 249, 278), as the best of his professional efforts.

The book which we have thus reviewed is well constructed, and the principal events of the different periods of Campbell's life are effectively grouped.

SIMEON E. BALDWIN.

A Treatise on the Law of Inheritance Taxation. By Lafayette M. Gleason and Alexander Otis. Second Edition. Albany, Matthew Bender & Co. 1919. pp. xvii, 1138.

Law books are of two sorts. Those whose writers assume that "codes of law are a created, permanent and invariable product" and those whose writers assume that such codes "are evolutionary, relative, changing and adaptive."[1] The categories are not exclusive because the conscious or unconscious believer in the first described philosophy nevertheless frequently suggests changes and thinks of permanency and invariability as applying to what to him are basic principles.

It is perhaps natural that such writers should also employ terminology which is inexact judged by current standards.

The present work is manifestly of the first sort. Proof is found in the use of material of which the following is a sample: "An inheritance tax is not one on property but one on succession. The right to take property by devise or descent is the creature of law and not a natural right."

It is difficult to determine in what sense the word "property" is here used. Manifestly, the word "right" here means "privilege." The phrase "natural rights" is now severely criticized by scientists.[2]

Recast the statements are:

An inheritance tax is not a tax on the congeries of legal relations termed property in things but on the privilege extended to the heir or devisee or legatee to acquire such property in things which belonged to a person now de-

[1] *Cf.* Brown, *Law and Evolution* (1920) 29 YALE LAW JOURNAL, 394; Keller, *Law in Evolution* (1919) 28 *ibid.*, 769; Justice Gager (1919) *ibid.*, 617.

[2] *Ibid.*